STATEMENT OF LESTER P. LAMM, EXECUTIVE DIRECTOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, TRANSPORTATION SUBCOMMITTEE, CONCERNING S. 344, A BILL TO AMEND SECTION 131, TITLE 23, UNITED STATES CODE, JULY 17, 1979

Mr. Chairman and Members of the Subcommittee:

The Department welcomes the opportunity to appear here today during consideration of S. 344 and the outdoor advertising control program. This hearing occurs just as we have finished a 2-day public hearing on July 10-11 in Washington concerning the Highway Beautification Program. Other hearings were held in June in Boston, Chicago, Portland, Baltimore, Kansas City, San Francisco, Denver, Atlanta, Dallas, and New York City. These hearings were for the purpose of soliciting comments from all interested parties who wish to express their ideas about the future direction of the Highway Beautification Program. In particular, the hearings were intended to focus on the impact of the 1978 Surface Transportation Assistance Act amendments to the program, the Comptroller General's report of March 27, 1978, entitled "Obstacles to Billboard Removal," proposed revisions to current FHWA regulations relating to control and acquisition of outdoor advertising signs and junkyards, and the restudy of national standards required under 23 U.S.C. §131(c)(1) and 131(f), and ordered restudied by the Congress in the 1976 Federal-Aid Highway Act.

Additionally, an outdoor advertising section 131(o) workshop/open meeting was held on May 15 to discuss the existing operational guidelines for the aspect of the program pertaining to the exemption from removal of certain nonconforming signs on an economic hardship basis.

We have been asked to address five basic areas regarding S. 344 and the administration of the present highway beautification program. These areas include:

I. Just compensation as it relates to §§122(a) and 122(b) of the Surface Transportation Assistance Act of 1978, P.L. 95-599, November 6, 1978, [1978 Amendments];

II. Comments on S. 344;

III. Present status of the outdoor advertising control program;

IV. Our initial impression of the reassessment hearings which I mentioned above; and

V. The Federal Advisory Committee we are establishing to review the comments received during the reassessment, and to make recommendations regarding the future of the highway beautification program.

I will handle these various subjects in turn.

I. JUST COMPENSATION

Section 122(a) of the Surface Transportation Assistance Act of 1978 amended the just compensation provisions of 23 U.S.C. §131(g). In effect, signs are now eligible for just compensation upon removal if they were lawfully erected under State law, whether or not their removal was caused by the Federal Highway Beautification Act. We have been asked to address the way in which we came to interpret the new compensation requirements in two memoranda, dated December 5, 1978, and March 6, 1979.

I want to make it clear from the very outset that the Administration opposed the 1978 modifications to the Beautification statutes. Nonetheless, we will try to administer the program as best we can consistent with congressional intent.

After the passage of the Act on November 6, 1978, we were uncertain as to the scope of application the new requirements were to take. This uncertainty was caused by complexities found in interpreting retroactivity and in determining the legality of sign status. Meetings were held with this Committee and the House Committee on Public Works and Transportation so that an interpretation as to these issues would not conflict with congressional intent.

As a result of these meetings, it was argued the new compensation requirements were not to apply retroactively, but were to only apply to those signs still standing as of November 6, 1978, the date of the Act. Since many signs still standing may have become illegal under State law, our initial interpretation, reflected in the December 5, 1978, memorandum, afforded compensation eligibility to those signs "legally in existence" as of November 6, 1978. In effect, this interpretation embodied the concept that legality of a sign be determined at the time of removal.

Although this interpretation dealt with the issue of retroactivity, the House Public Works Subcommittee leadership and staff subsequently emphasized to us the statutory language stating that a

sign is eligible for compensation if it was "lawfully erected under State law." Since the legislative history of the 1978 Compensation Amendment is clear that amortization of signs under general zoning ordinances was no longer valid, the December 5, 1978, interpretation could have frustrated this intent. Under our initial interpretation, a sign that is lawfully erected, and still standing on November 6, 1978, would not be eligible for compensation if the amortization period had run prior to November 6, 1978.

Given the insistence that sign legality is to be determined at time of erection, the issue of retroactivity had to be addressed again. Committee staff pointed to three categories of lawfully erected signs existing on November 6, 1978: those still standing, those removed, with or without compensation, and those removed with the issue of compensability pending in litigation. Upon consultation with the House Public Works Committee, the March 6, 1979, memorandum was issued to clarify the application of the compensation amendments. Those signs which had been lawfully erected, and had been removed by November 6, 1978, were not to receive compensation if no judicial process was still pending. A "retroactive" application would only apply if a sign had been removed prior to November 6, 1978, and a legal challenge to this removal had not been resolved as of November 6, 1978. We would also like to point out that the compensation requirement would only

apply when uncompensated removal is tied to some nonvolitional act of the sign owner, such as the expiration of an amortization period. Ordinary maintenance requirements may continue.

We are aware of litigation involving about 9,000 signs which would be subject to this interpretation. Of these, most are signs involved in cases brought by major sign companies. We project that compensation for these signs will involve an added expense to the program of about $20 million. The effect of this interpretation based as it is on the intent of the Congress, is that signs in litigation will have a first call on beautification funds to the extent that State laws permit their use for this purpose. (Where a locality is involved in the litigation, some State laws may not permit the pass through of Federal funds.)

II. COMMENTS ON S. 344

S. 344, which is the vehicle for this hearing, would fundamentally change the direction of the Highway Beautification Program as it relates to outdoor advertising control. The predominant change would be to make the control of outdoor advertising voluntary and provide for Federal participation if certain minimum control standards are met and the States choose to provide compensation. In contrast, the present program attaches a penalty for failure to comply with the Highway Beautification Act. The congressional declaration is changed from one in which the Congress states that

outdoor advertising "should be controlled" to one in which the Congress states that it is in the public interest for the Federal Government "to assist the States in controlling" outdoor advertising. This change is also inherent in the name assigned to S. 344, the Federal Highway Beautification Assistance Act of 1979."

In light of the current reassessment, we believe it inappropriate for the Department to support or oppose any legislation relating to outdoor advertising control at this time. We believe any legislative action should await completion of this reassessment. However, we are pleased to provide you with our technical comments on S. 344 based upon our experience with the existing beautification program.

Section 2 (amending 23 U.S.C. 131(b)) sets forth the basic principle of S. 344 which is to allow the States the options of (1) maintaining any outdoor advertising control program, and (2) providing compensation for signs required to be removed if the State elects to maintain a control program. States that establish "an effective statewide system of control" and elect to pay compensation would be eligible for Federal participation in 80 percentum of the cost of such compensation. This is an increase from 75 percentum as set forth in existing section 131(g). As noted previously, no penalties are associated with failure to provide compensation. The bill preserves the bonus program unchanged, by using the same language as is presently contained in 23 U.S.C. 131(j)).

Briefly, I would like to comment on the workability of the approach adopted in S. 344:

1. Section 2 of the bill amending 23 U.S.C. 131(c) and (c)(5) states that:

> "An effective statewide system of control is one which provides that signs, displays, or devices, if located within six hundred and sixty feet of the right-of-way within urban areas or if located outside urban areas and visible from the main traveled way of the system, shall be limited to . . . (5) signs, displays and devices in areas zoned industrial or commercial under authority of State law and actually developed for such use or in unzoned commercial or industrial areas."

Implementation of this section would probably require definition of "commercial or industrial development," as well as "unzoned commercial or industrial areas." This could be done by adopting Federal standards, by using State developed standards approved by the Secretary, or by affording the States the option of either approach.

2. Implementation of section 2 of the bill amending 23 U.S.C. 131(c) will result in a new class of nonconforming signs located in undeveloped commercial or industrial zones. The bill would be clearer if reference were made to nonconforming signs or the term "nonconforming" were defined. In addition, it would be helpful if the bill established an effective date upon which such signs would be considered nonconforming.

3. We would suggest that Federal participation in compensation should not be limited to terms as absolute as those set out in section 2 of S. 344 amending 23 U.S.C. 131(b). Rather,

the section could be rewritten to establish the maximum interest which could be acquired with Federal participation. Should the State elect to provide some lesser measure of compensation, but still maintain an effective statewide system, we see no reason to deny Federal participation in such lesser measure of compensation.

4. Upon implementation of S. 344, as currently written, there would be no way to prevent States from entering and leaving the program at will. Thus, a State could voluntarily enter the program, use Federal funds to acquire a given number of signs, and then terminate all controls. The potential for abuse is evident. In order to counteract this problem, we suggest the following:

   a. A cut-off date, after which participation in the Federal program would no longer be permitted. This occurred with respect to the bonus program in 1965. The advantage of this proposal is that it is easy to administer and it would discourage States from leaving the program since reentry after the cut-off date would be impossible. Under this approach we would suggest a 2-year period, preceding the cut-off date, during which States could decide whether to participate in the program. A provision could be added to the bill directing the Secretary to make an assessment after the cut-off date to determine the

amount of funding necessary for program completion in a time period to be determined by the Secretary.

b. The Secretary could be given the authority to negotiate an agreement with States entering the voluntary program. Such an agreement would contain provisions describing the consequences of withdrawing from the program. Use of this approach would require amendment of section 2 of the bill (amending 23 U.S.C. 131(b)). We would suggest that the second sentence in that section be rewritten to read: "Whenever a State which has established and has agreed to maintain an effective statewide system of control . . ." (underlining indicates new language).

c. It may be possible to specify a statutory penalty for withdrawal. However, this might well discourage States from embarking upon a voluntary program and therefore is not a recommended approach.

5. The issue of controls on the Federal lands and reservations, viz. Indian lands, could be addressed in S. 344.

6. The Federal matching share could be reduced from 80 percent to 75 percent, the same matching share that applies to most other Federal highway assistance programs.

We hope these technical comments and observations, as well as a section-by-section factual analysis I am entering into the record, will be of use to the Committee in its consideration of S. 344.

III.. PRESENT STATUS OF THE OUTDOOR ADVERTISING PROGRAM

I am sure that the Subcommittee is interested in the present status of the billboard control effort. Accordingly, I will submit for the record a statistical report which should bring the Subcommittee up to date on the present program. Also included is a digest which summarizes the present program and a brief discussion of some of the issues raised by the 1978 Amendments.

While the statistics can be read in a variety of ways, our conclusion as to the success of the present program is best described as mixed. Many States continue to resist the implementation of an active control and acquisition program. The many special categories of the Act have confused both sign owners and State administrators. Uneven funding has made it difficult or impossible for States unwilling or unable to invest a great deal of their own funds since Federal support has been unpredictable. All of these problems were addressed in the GAO report of March 27, 1978 (CED-78-38), entitled "Obstacles to Billboard Removal."

Section 122(b) of the Federal-Aid Highway Act of 1976, 23 U.S.C. 131(q)(1), required the Secretary of Transportation to encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end, the Secretary was required to restudy and revise as appropriate existing

standards for directional and informational signs to develop signs which are functional and esthetically compatible with their surroundings.

Pursuant to this mandate, the Federal Highway Administration formed an in-house interdisciplinary task force to consider all motorist information systems. An Advance Notice of Proposed Rulemaking was published in 1976 wherein public comment was solicited. Additionally, several independent studies were undertaken relative to motorist information needs.

The task force has recently submitted its final report to the Federal Highway Administrator and an announcement as to the availability of the report of the task force will be published in the Federal Register in the near future. This report will be utilized in the reassessment of the Highway Beautification Program.

Much has been done, but the road to completion is long, and the 1978 Amendments, we believe, have complicated the problem. We believe that this is an appropriate time to consider how the program should be administered in the future. It may well be that the present complexity is necessary to achieve fairness, but before that is finally decided, a careful reassessment of the program as it is presently structured is in order. For this reason, the FHWA has embarked on the nationwide effort I mentioned earlier. This

effort began with an Advance Notice of Proposed Rulemaking published in the Federal Register on April 30, 1979, at 44 FR 25388, and is continuing now. Copies of a number of documents relating to this reassessment are submitted for your information.

IV. IMPRESSIONS OF THE REASSESSMENT HEARINGS

I would like to report to you on our initial impression of the public hearings which ended last week. Let me emphasize that these analyses are very preliminary at best, and based on the documents and testimony received. They do not, in any sense, reflect our final conclusions of the entire record.

The Highway Beautification Reassessment Hearings have been completed at the 11 locations throughout the country. Approximately 875 people attended with 435 presenting testimony. The speakers could generally be grouped into those representing the outdoor advertising industry, advertisers, State and local government officials, anti-billboard groups and concerned citizens. Additionally, the Governors of the States of Colorado and South Dakota, and former Governor Tom McCall of Oregon, offered testimony at the hearings. Congressmen Kostmayer and Murphy of Pennsylvania provided oral testimony at the hearing in Washington, D.C.

The outdoor advertising industry representatives unanimously expressed support for the existing Highway Beautification Program supporting the 1978 Amendments on just compensation. Although

expressing support for the existing program, several of the speakers indicated that the FHWA was not administering section 131(o) hardship exemptions for directional signs in accordance with the intent of the Congress.

The advertisers who rent outdoor advertising space and small businessmen who own signs complained that the controls penalized the small businesses. Furthermore, they leveled criticism at the FHWA's administration of section 131(o) program from the standpoint that to date no exemptions had been allowed. Mixed viewpoints were expressed both for and against S. 344.

The city and county representatives responsible for billboard control indicated they were completely against the existing Highway Beautification Program as it usurps their authority to legislate and regulate.

Thirteen States have provided oral testimony or written comments on the existing program as of last Wednesday. The consensus of these comments is that the 1978 amendments on compensation made it extremely difficult to continue the program and remain in compliance. These States indicated that they should not be held responsible for the actions of local governments exercising police power controls. They felt that insufficient State or Federal funds were or would be available to continue the program.

Eight of the thirteen State representatives indicated they would support the Stafford Bill which would make the program optional on the part of the State. One of the State representatives indicated that he was speaking in support of S. 344 on behalf of the American Association of State Highway and Transportation Officials (AASHTO), and indicated that two-thirds of the States would favor an optional program. Three States indicated support for the existing program with what they consider minor modifications. One State suggested stricter controls along controlled access highways and another indicated the State would prefer complete police power control with no requirement for compensation.

Most environmentalists felt the Highway Beautification Program was substantially weakened by numerous amendments since its inception and that not enough was being accomplished to control outdoor advertising signs.

The individual citizens indicated that either there was too much control so that they did not have adequate directional signing or not enough was being accomplished and billboard blight remained.

Approximately 600 letters have been submitted to the docket at this time. All comments received at the hearings or in the Docket (No. 79-10) will be provided to the Advisory Committee. In

addition, the FHWA will make its own assessment of the hearing records and the Docket. The Docket closed July 15, 1979.

V. NATIONAL ADVISORY COMMITTEE ON OUTDOOR ADVERTISING AND MOTORIST INFORMATION

Another development of which you should be aware is an announcement last Thursday, July 12, in the Federal Register (44 FR 40781) which I submit for the record, establishing a National Advisory Committee on Outdoor Advertising and Motorist Information.

The advantages of establishing an advisory committee to review the materials gathered pursuant to the reassessment effort are considerable. Review of all materials relating to the reassessment by a broad-based advisory committee would provide an excellent opportunity to inject some external views into the FHWA decisionmaking process. As the advisory committee will include selected representatives of all interests providing direct input, it is our sincere hope that its recommendations would represent a consensus of those with a strong interest in the Highway Beautification Program.

It is estimated that the cost of this committee will be $50,000 annually, and that the committee will be functioning within 3 months. Considering the above, it is our conclusion that establishing an advisory committee is the most effective, expeditious, and economical means of evaluating the outdoor advertising control and acquisition programs. It is understood that the committee will serve only as

long as necessary to fulfill its function, and it would certainly be possible to terminate the committee within a period of approximately 2 years.

Considering the GAO report entitled "Obstacles to Billboard Removal," the amendments to the Surface Transportation Assistance Act of 1978, the proposed Fiscal Year 1980 budget of no funds for the Beautification Program, and the general controversy over the cost effectiveness of the program, we feel that the establishment of this advisory committee is necessary and in the public interest.

In conclusion, Mr. Chairman, I would like to reiterate that we do not believe additional legislation should be enacted in this area until our reassessment of the Beautification Program has been completed.

This completes my statement. I will be glad to answer any questions you may have.

Thank you.